

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 12, 2007 Session

CITY OF MURFREESBORO v. ZOL HOOPER

**An Appeal from the Circuit Court for Rutherford County
No. 53483 Robert E. Corlew, III, Judge**

No. M2006-02050-COA-R3-CV - Filed on August 14, 2007

This is a challenge to a speeding ticket. A city police officer issued a speeding ticket to the defendant for traveling at a speed in excess of the posted speed limit of forty miles per hour. The traffic court found the defendant guilty of the offense and ordered him to pay a fine and costs. The defendant appealed his conviction for the traffic offense to the circuit court below. In the circuit court, defendant argued that his speeding ticket was void because the posted speed limit was invalid, based on the fact that the City had failed to reevaluate the appropriate speed limit for that portion of the street. The trial court rejected that argument, concluding that the City's failure to reevaluate the speed limit on the road in question did not invalidate the posted speed limit. Thus, the trial court affirmed the defendant's conviction for violation of the speed limit. The defendant now appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, J., and DAVID R. FARMER, J., joined.

Hal Rounds, Somerville, Tennessee, for the appellant, Zol Hooper.

Richard W. Rucker, Murfreesboro, Tennessee, for the appellee, City of Murfreesboro.

MEMORANDUM OPINION¹

On March 1, 2006, Officer Kyle Evans, a police officer for the Petitioner/Appellee City of Murfreesboro (“City”), issued a speeding ticket to Respondent/Appellant Zol Hooper (“Hooper”) for driving fifty miles per hour in a forty mile per hour speed zone on Rutherford Boulevard in Rutherford County, Tennessee. On April 4, 2006, Hooper appeared in traffic court and pleaded “not guilty” to the offense. After a hearing, Hooper was found guilty of speeding, and the traffic court imposed a fine and costs against him.

Hooper appealed the traffic court decision to the Rutherford County Circuit Court. On August 9, 2006, the circuit court conducted a *de novo* hearing. At the hearing, Hooper conceded that he had been driving in excess of the posted speed limit. He argued, however, that the posted speed limit was invalid because the City had not conformed to the requirements in the Manual on Uniform Traffic Control Devices (MUTCD).

At the hearing, the circuit court heard testimony from Hooper and Officer Evans related to the ticketing incident on March 1, 2006. Officer Evans testified that he had actually “clocked” Hooper as driving fifty-five miles per hour on that day, but he reduced the charge to driving fifty miles per hour in a forty mile per hour zone. Officer Evans testified that drivers speeding on that section of Rutherford is a common occurrence. In his testimony, Hooper admitted that he was driving fifty-five miles per hour when he was ticketed. He testified that the posted speed limit was established when he was two years old, and that there had been much development in the area since that time. He noted that, in the interim, four large churches, an apartment complex, and a Wal-Mart had been built on or near Rutherford Boulevard. In addition, the local college had built a parking lot on that road.

Dana Richardson (“Richardson”), a traffic director with the City, also testified at trial. Richardson said that he performed a traffic study of Rutherford Boulevard and issued a report on that study on January 23, 1990. He explained that, prior to the study, the speed limit on the road was thirty miles per hour. Growth in the area, traffic congestion, and other factors triggered the new study. As a result, the speed limit was increased; on some parts of the road it was increased to forty miles per hour and on other parts it was increased to forty-five miles per hour. The report indicated an intent to reevaluate the new speed limits on Rutherford after one year. This was not done, and no further study was conducted after the 1990 study. Richardson said that, although there had been some new development along Rutherford, he felt that the conditions on the road had not changed significantly since January 1990 so as to necessitate another study.

¹ **Rule 10. MEMORANDUM OPINION**

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

During Richardson's testimony, a copy of the 2003 version of the MUTCD was entered into evidence. Richardson testified that the new speed limit for Rutherford was set in accordance with the MUTCD, which was developed by the Federal Highway Administration and was adopted by the State of Tennessee. Richardson described the MUTCD as the authority for posting speed limits, and said that the MUTCD "controls all aspects of how to use signs." Hooper's counsel had Richardson read from the MUTCD, which states that "[a]t least once every 5 years, States and local agencies should reevaluate non-statutory speed limits on [segments] of their roadways that have undergone a significant change in roadway characteristics or surrounding land use since the last review."

At the conclusion of the hearing, the trial court found that, even if the City had failed to reevaluate the speed limit on Rutherford in accordance with the MUTCD, the posted speed limit remained valid for purposes of enforcing the speeding ticket issued against Hooper. The trial court indicated that, even assuming that the MUTCD was mandatory, it was unclear whether Rutherford Boulevard had "undergone a significant change in roadway characteristics" so as to require a reevaluation of the speed limit since 1990. Ultimately, the trial court concluded that, regardless of whether the City had complied with the MUTCD, "we need a speed limit. . . . I don't think I could find that . . . the posted speed limit is invalid." Therefore, it affirmed the traffic court's determination that Hooper was guilty of speeding as cited in his ticket. From this order, Hooper now appeals.

On appeal, Hooper again challenges the speeding ticket issued to him, arguing that the speeding ticket is void because the City failed to comply with the MUTCD requirement that the speed limit on Rutherford be reevaluated. In addressing this issue, we review the trial court's findings of fact *de novo*, presuming those findings to be correct, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). We review questions of law *de novo*, without any such presumption of correctness. *Id.*

Pursuant to Tennessee Code Annotated § 54-5-108, the Tennessee Department of Transportation ("TDOT") has the power "to formulate and adopt a manual for the design and location of signs, signals, markings, and for posting of traffic regulations on or along all streets and highways in Tennessee . . ." T.C.A. § 54-5-108(b) (2004). Rather than formulating its own manual for these purposes, Tennessee has adopted the standards set forth in the MUTCD, which was published by the Federal Highway Administration. *See Fowler v. Henderson*, Nos. W2002-02529-COA-R3-CV, W2003-02862-COA-R3-CV, 2003 WL 23099686, at *5 (Tenn. Ct. App. Dec. 31, 2003).

As noted above, the provision of the MUTCD upon which Hooper relies provides that, "[a]t least once every 5 years, States and local agencies should reevaluate non-statutory speed limits on segments of their roadways that have undergone a significant change in roadway characteristics or

surrounding land use since the last review.”² Hooper claims that, based on this language, the City was required to reevaluate the relevant portion of Rutherford because the road has undergone significant changes since the January 1990 study was performed. Because such a reevaluation was not performed, he argues, the speed limit posted is invalid, and his ticket is void.

Hooper’s argument is without merit. First, the MUTCD provision upon which he relies uses language that is not mandatory, stating only that the speed limits “should” be reevaluated every five years under certain conditions. Hooper cites no authority to suggest that “should” must be read as “shall” in this context.

Second, the MUTCD was adopted by Tennessee as a “manual for the design and location of signs, signals, markings, and for posting of traffic regulations on or along all streets and highways in Tennessee . . . ; it regulates the use of signs, signals, and other devices, not the setting of speed limits. T.C.A. § 54-5-108 (2004); *see, e.g., Begley v. State*, 162 S.W.3d 535, 538 (Tenn. Ct. App. 2004); *Atkins v. State*, No. E2003-01255-COA-R3-CV, 2004 WL 787166, at *2 (Tenn. Ct. App. Apr. 14, 2004). It is undisputed that municipalities such as the City of Murfreesboro are authorized by statute “to set speed limits on the public roads and streets within their jurisdiction. . . .” T.C.A. § 55-8-152(f)(1)(C); *see also* T.C.A. § 55-8-153 (2004).

Finally, and most importantly, even if the MUTCD were mandatory and regulated the setting of speed limits for the City, Hooper cites no authority to support his assertion that a failure by the City to timely reevaluate the speed limit renders the posted speed limit invalid and voids his speeding ticket. If we were to adopt Hooper’s reasoning, taken to its logical conclusion, this would mean that the posted speed limit for any road not timely reevaluated by the municipality would automatically become invalid. Such roads would effectively have no speed limit, and the municipalities would be left unable to protect the public safety and welfare. We respectfully decline to adopt this argument.

The decision of the trial court is affirmed. Costs on appeal are to be taxed to Appellant Zol Hooper and his surety, for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE

² As the trial court noted, the regulations in the MUTCD are set out under three subheadings, which are called “standards,” “guidance,” and “options.” The trial court also correctly noted that the applicable provision in this case falls under the heading of “guidance.”